exemption is almost irrelevant, particularly for a company like GTE, which has very few zone 1 offices in the top 50 MSAs. Nonetheless, several IXCs seek to limit the exemption even further by increasing the number of lines above which the circuit switching UNE need not be provided. In particular, a few petitioners argue that the cut-off should be set at the level where it would be efficient to serve a customer using a DS–1 circuit, although they disagree as to what that level is.[26]

In reality, as Bell Atlantic shows in its Petition for Reconsideration, CLECs are not impaired in any location where competitors have deployed their own switches.[27] Consequently, further limiting the effect of the switching exemption would violate the statute and unreasonably deter facilities-based competition. Moreover, granting the petitioners' request would favor the large IXCs (which uniformly pursue a platform-based strategy rather than investing in facilities to reach residential and small business customers), while penalizing the multitude of independent CLECs that have deployed switches and are beginning aggressively to serve the mass market.

In any event, the petitioners have offered no persuasive reason for the Commission to reconsider its "expert judgment" that the existing Rule "captures the division between the mass market ... and the medium and large business market ...."[28]

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[26] *See* AT&T Petition at 12-13, Birch Petition at 3-8, CompTel Petition at 2-5, MCI Recon. Petition at 20. AT&T and MCI put the DS1-equivalent number at 8 lines, while Birch argues for a 10-12 line cut-off. Sprint (at 8-9), relying on internal information and an undisclosed Yankee Group study, asks for a 39-line cut-off.

[27] Bell Atlantic Petition at 6-11.

[28] *UNE Remand Order*, ¶ 294.

The clearest argument comes from AT&T, which asserts that a CLEC seeking to use individual UNE loops to serve a customer will be materially impaired because of the need for hot cuts.[29] Even assuming the validity of the Commission's belief that hot cut problems are so extensive as to impair CLECs' ability to compete in the mass market – a conclusion that GTE views as contrary to marketplace realities – the Commission made its decision to set the cut-off at four lines with full appreciation for the problems purportedly caused by hot cuts. AT&T therefore has not shown that the Commission failed to consider relevant evidence. The IXCs' request – which notably is not echoed by the multitude of CLECs that have deployed their own switches – should be denied.

The Commission also should reject the IXCs' argument that ILECs should be required to provide unbundled switching for up to three lines, even where the exemption applies,[30] and that ILECs cannot withdraw unbundled switching when a customer moves from three to four lines.[31] The first request ignores the Commission's finding that there is no impairment when a CLEC seeks to serve a customer with four or more lines.[32] Given this holding, it would be unlawful to grant this relief.

The second request likewise runs head-on into the Commission's no-impairment finding. ILECs cannot be required to provide unbundled switching where the § 251(d)(2) standard is not met. In addition, revising the Rule in this matter would invite

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[29] AT&T Petition at 17.

[30] AT&T Petition at 18.

[31] AT&T Petition at 18, MCI Recon. Petition at 22.

[32] *UNE Remand Order*, ¶¶ 290-299.

manipulation of the Rules. For example, CLECs could advise a new, multi-line customer to convert three lines under a UNE arrangement and then add the remainder of their lines a short time later. Nonetheless, GTE agrees that a reasonable transition period should be permitted before ILECs can withdraw existing UNE switching for a customer whose line count exceeds the threshold. There is no need for a Commission rule codifying such a transition period; ILECs and CLECs can work this out during the course of interconnection negotiations, subject to the Act's procedures for resolving disagreements.

C. No Revisions to the Operator Services/Directory Assistance ("OS/DA") Rule Are Warranted.

The record in the UNE remand proceeding indisputably establishes that operator services and directory assistance are available from non-ILEC sources. As a result, the Commission properly held that ILECs need not provide unbundled access to these capabilities where they offer customized routing, although it noted that ILECs must continue to provide non-discriminatory access to OS/DA databases under § 251(b)(3). The net effect of the *UNE Remand Order*, therefore, is that ILECs may withdraw TELRIC pricing of operator services and directory assistance once they have implemented customized routing.[33]

MCI WorldCom nonetheless asks the Commission to resurrect OS/DA as a UNE, claiming that ILECs remain a monopoly source of information and TELRIC pricing is

[33] *See id.*, ¶¶ 441-464.

needed.[34] MCI WorldCom offers no evidence, however, to contradict the massive record upon which the Commission's decision was based. The fact remains that a CLEC suffers no impairment in obtaining OS/DA from non-ILEC sources or from the ILEC pursuant to § 251(b)(3). MCI WorldCom just wants a price break, but none is warranted.

For its part, AT&T seeks numerous "clarifications" of the OS/DA Rule.[35] For example, AT&T urges that TELRIC pricing of OS/DA not be withdrawn until the ILEC demonstrates that it has completed the last switch conversion to complete customized routing, and that customized routing be implemented through either line class codes or AIN, at the requesting CLEC's request. AT&T also asks for advance notice of discontinuance and a reasonable transition period during which OS/DA remains available at TELRIC prices. The relief that AT&T requests is either unnecessary or contrary to sound policy.

To the extent AT&T seeks region-wide deployment of customized routing before TELRIC pricing of OS/DA is discontinued, its request is unduly burdensome and overbroad. Customized routing is ordered and provisioned on an individual case basis; it is not pre-positioned in switches where there is no demand, given the associated expense. Under Rule 51.319(f), OS/DA will remain available at TELRIC prices where customized routing has not been implemented, so there is no conceivable harm to

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[34] MCI Recon. Petition at 18-19; *see also* RCN Petition at 5 n.13, 6 (raising similar arguments to MCI WorldCom).

[35] AT&T Petition at 21-24.

CLECs.[36] There is also no basis for requiring ILECs to implement customized routing through the method requested by individual CLECs. GTE meets this obligation through line class codes; requiring it also to provide customized routing through AIN upon request would be needlessly expensive.[37]

Finally, RCN states that access to unbundled OS is necessary for public safety purposes where the local operator handles 911 calls that cannot be routed to the PSAP.[38] The Commission properly rejected this argument in the *UNE Remand Order*, finding that "the ability or inability to connect OS/DA calls to a PSAP" does not impair the ability of a carrier to offer competitive local exchange services.[39] RCN nonetheless suggests that the Commission "failed to recognize ... that operators serving some communities must be able to respond to emergencies themselves without recourse to the PSAP."[40] As RCN later admits, however, ILEC operator services remain available in these limited circumstances.[41] There is therefore no risk to public safety,

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[36] In actuality, GTE will withdraw TELRIC prices for OS/DA only upon expiration of the relevant interconnection agreements. Moreover, those agreements already require prior notice of price changes, rendering AT&T's request for a similar rule superfluous.

[37] Line Class Codes or their equivalent are common across all digital switches, so this method can be deployed ubiquitously across all technologies. AIN, however, requires SS7, which is not available in all cases; nor has AIN been purchased in all switch technologies. AIN therefore adds cost to customized routing without adding any obvious value.

[38] RCN Petition at 3-4.

[39] *UNE Remand Order*, ¶ 459.

[40] RCN Petition at 4.

[41] In the GTE operating territories, approximately 3-5 percent of all locations do not
(Continued...)

notwithstanding RCN's dire warnings. In reality, it is only the price of ILEC-provided OS that troubles RCN; RCN argues that failure to charge TELRIC-based rates for OS "would not further the Commission's goal of promoting CLEC differentiation of service through price competition."[42] RCN has failed, however, to demonstrate that the Commission erred in finding a lack of impairment with respect to OS, either in these limited areas or anywhere else. The Commission therefore should not disturb its decision to take OS/DA off the UNE "list."

D. The Commission Should Not Expand Unbundled Access to Packet Switching and Related Elements.

The *UNE Remand Order* declined to order general access to a packet-switching network element, finding that "competitors are actively deploying facilities used to provide advanced services" to medium and large businesses, and that the "nascent nature of the advanced services marketplace" counsels against access to ILEC packet switching (including DSLAMs) for use in serving mass market customers.[43] The Commission also specifically rejected requests to mandate unbundling of ports on data

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(...Continued)
have access to 911 service. In this situation, GTE maintains a database that contains all the emergency numbers for the NPA-NXXs and can route an emergency call accordingly. When GTE provides operator services for a wholesale customer (*e.g.*, a CLEC), GTE requests that customer to provide the emergency numbers. Moreover, there are third-party OS providers with which CLECs can contract.

[42] RCN Petition at 5 n.13.

[43] *UNE Remand Order*, ¶ 306. The Commission retained packet switching as a UNE only where the ILEC has deployed a DLC system, the CLEC is unable to install its DSLAM at the remote terminal, and there is no spare copper loop available. *Id.*, ¶ 313.

switches or routers and connectivity between such ports, including the switching fabric and associated software.[44]

MCI WorldCom, Intermedia, and CompTel ask the Commission to overturn these decisions. Specifically, these carriers claim that (1) CLECs are impaired without access to connectivity between points within the ILECs' data networks,[45] because, for example, CLECs are forced to order frame relay interconnection out of the ILECs' federal access tariffs at "inflated prices,"[46] and (2) access to unbundled packet switching is required by the Act and will not impair ILEC deployment of advanced services.[47] Neither argument has merit.[48]

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[44] *Id.*, ¶ 311.

[45] Intermedia Petition at 6-7, CompTel Petition at 7-10 (arguing that packet transport and switching must be unbundled for the same reasons as the Commission ordered unbundled access to unbundled circuit-switched transport and switching). Intermedia (at 9) also asks the Commission to clarify that CLECs may resell frame relay services at a wholesale discount. No such clarification is needed. To the extent these services are provided at retail to end users, they qualify for a discount. To the extent they are provided on a wholesale basis, they do not. Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Second Report and Order*, FCC 99-330, CC Docket No. 98-147 (rel. Nov. 9, 1999).

[46] Intermedia Petition at 7-8.

[47] MCI Recon. Petition at 4-12.

[48] In addition, AT&T (at 11) asks the Commission to re-define DSLAMs as part of the loop rather than packet switching. This request should be denied; no matter how DSLAMs are defined, there is no basis for finding that a CLEC is impaired without access to unbundled ILEC DSLAMs.

The Commission already rejected Intermedia's request for access to unbundled packet-switched transport in the *UNE Remand Order*,[49] and Intermedia has offered no new information to compel reconsideration. While Intermedia has recast its request in "technologically neutral" terms – rather than focusing on frame relay, as it did initially – this rhetorical change is insufficient to demonstrate impairment. Nor does the unsupported allegation regarding the ILEC's tariffed frame relay rates help its cause. Those rates are cost-based and reasonable; Intermedia is looking for an additional, unwarranted price break by seeking to require re-pricing of frame relay at TELRIC-based levels.

MCI WorldCom likewise raises no new arguments. Contrary to MCI WorldCom's claims, the Commission has express discretion under § 251(d)(2) to consider factors beyond impairment in determining whether to require unbundled access to packet switching.[50] Thus, even assuming that CLECs might be impaired in serving the mass market without access to unbundled ILEC packet switching – an assumption with which GTE strongly disagrees – the Commission had ample authority to decline to mandate unbundled access to this element. Finally, MCI WorldCom's claim that mandating access to unbundled packet switching would not deter ILEC deployment of advanced services ignores basic economic principles: if a company contemplating an investment in risky technology will be forced to share the benefits (but not the risks) with its

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[49] *UNE Remand Order*, ¶ 312.

[50] The statute directs the Commission, "at a minimum," to consider whether lack of access to a UNE would impair a CLEC. *See* 47 U.S.C. § 251(d)(2).

competitors, its incentive to invest will be severely diminished. The Commission's recognition that, "in such a dynamic and evolving market, regulatory restraint ... may be the most prudent course of action in order to further the Act's goal of encouraging facilities-based investment and innovation" remains a sound guiding principle.[51]

E. ILECs Cannot Be Forced To Construct UNE Combinations Where They Do Not Already Exist.

Several petitioners ask the Commission to "clarify" that ILECs must make UNE combinations available if they are "ordinarily" combined, not just where they are already combined. These parties focus specifically on being able to use UNEs to provide special access without first ordering an access circuit and then converting it, and on providing UNE-P to new customers.[52] These requests are meritless.

The ability of a carrier to substitute UNE combinations for special access is under consideration in another phase of this proceeding and is not properly addressed here. As GTE explained in its comments on the Fourth FNPRM, the Commission can and should prohibit carriers that do not provide local service to a customer from converting special access arrangements into UNEs or ordering a UNE combination to

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[51] *See UNE Remand Order*, ¶ 316.

[52] CompTel Petition at 11-12, MCI Clarif. Petition at 6-9, Sprint Petition at 15. CompTel also reiterates arguments (made in response to the Fourth FNPRM in this proceeding) that any use restriction on loop/transport UNEs is unlawful. CompTel Petition at 15. CompTel is wrong, as GTE demonstrated in its filings in response to the Fourth FNPRM. *See* Comments of GTE, CC Docket No. 96-98 (filed Jan. 19, 2000); Reply Comments of GTE, CC Docket No. 96-98 (filed Feb. 18, 2000).

act as a special access arrangement. If the Commission agrees, then the request for clarification is moot.

In addition, the Commission was correct that the scope of an ILEC's obligation to provide access to UNE combinations that are not currently combined (as in the provision of UNE-P to a brand new customer) is before the Eighth Circuit.[53] While certain IXCs claim that they are asking for a simple interpretation of Rule 51.315(b) (which requires ILECs not to "separate requested network elements that the incumbent currently combines"), this argument is belied both by the breadth of their request and the language of the Commission's Rules. CompTel, for example, asks the Commission to interpret Rule 51.315(b) to require that, "if the ILEC has previously supplied or used a UNE combination anywhere in its network for any service or customer, then the ILEC should be required to provide that same combination upon request to new entrants for any service they wish to provide to any customer they wish to serve."[54] This sweeping request plainly falls within Rule 51.315(c), the validity of which remains under judicial review, not Rule 51.315(b).[55] Accordingly, the IXCs' requests for clarification must be denied.

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[53] *UNE Remand Order*, ¶¶ 479-480.

[54] CompTel Petition at 13.

[55] Rule 51.315(c) requires an ILEC to "perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network ...."

F. MCI WorldCom's Request for Subloop Information Is Potentially Overbroad.

MCI WorldCom asks the Commission to require ILECs to provide information regarding the location, capacity, capabilities, and space availability of sub-loop facilities, including where distribution nodes are located, the type of technology used in various loop segments, and a laundry list of other data. It urges that this information be made available down to the individual customer's address.[56] This request goes well beyond what can lawfully be required under the Act.

Granting MCI WorldCom's petition would require ILECs to perform burdensome and expensive network inventories to collect information that they currently do not have.[57] The Act, however, only requires ILECs to provide non-discriminatory access to unbundled network elements – not to take extraordinary measures at a competitor's request to compile information that is not available to the ILEC's own retail operations.[58] MCI WorldCom's request therefore should be denied.

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[56] MCI Recon. Petition at 23-24.

[57] As the Commission has elsewhere required, *UNE Remand Order*, ¶¶ 426-428, GTE will make available, by May 17, non-discriminatory, electronic access to loop qualification information. By entering a telephone number or address, CLECs will gain web-based access to the same loop data as are available to GTE's retail operations. The information sought by MCI WorldCom is largely unrelated to these loop qualification data, which determine the suitability of the loop for advanced services.

[58] *Id.*, ¶ 429 ("If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers.").

G. It Is Not Technically Feasible To Permit Third-Party Access to AIN Triggers and Interconnection of Third-Party SCPs and IPs.

In the *UNE Remand Order*, the Commission rejected a request from Low Tech Designs that ILECs be required to provide unbundled access to AIN triggers and to permit interconnection of third-party Service Control Points ("SCPs") and Intelligent Peripherals ("IPs").[59] In so holding, the Commission found that there was insufficient evidence to make a determination that such access and interconnection are technically feasible. Low Tech now renews its request, claiming that the Commission has ignored state decisions that purportedly declare such access and interconnection to be technically feasible and asserting that CLECs are impaired without the relief it seeks.[60]

As the Commission is well aware, unmediated third-party access to AIN triggers, and interconnection of third-party SCPs and IPs, raise serious network reliability

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[59] *UNE Remand Order*, ¶ 407.

[60] Low Tech Designs Petition at 2-11. Low Tech also incorrectly alleges (at 8-9) that the Commission has denied competitors the ability to create proprietary AIN services. In reality, CLECs are free to design AIN services using the ILEC's Service Management System ("SMS") and may deploy those services on the ILEC's SCPs once they have been tested. *UNE Remand Order*, ¶ 412. Low Tech also attaches two white papers prepared by an individual at Telecordia that supposedly show that access to AIN triggers is "the needed 'glue' for the transition from existing switched networks to the packet based networks of the future." Low Tech Petition at 9. In reality, however, these papers establish nothing of the sort. Rather, they reference a technology called JAVA Application Program Interface Integrated Networks ("JAIN"). JAIN is being advanced by the industry as a method of providing access to the control functions of the network. This effort involves the development of specifications for industry standard interfaces to this new network architecture that incorporates appropriate mediation functions and provides access to both the PSTN and packet network on a consistent basis. This architecture does not support Low Tech's assertion that third party *direct* access to AIN switch triggers is required to provide new services in the evolving network. Without an approach similar to the JAIN effort, integration is not possible.

concerns.[61] Indeed, shortly before passage of the 1996 Act, GTE and other ILECs submitted detailed ex partes explaining why unmediated access would create unacceptable risks of destructive service interactions.[62] Following the Act, AT&T and other CLECs asked for unmediated access in numerous arbitrations, and as a general rule the state commissions declined to order such access in light of the risks involved. Moreover, even where such access initially was required in principle – including for AT&T in Illinois – GTE is unaware of any instance where a third party has interconnected in this manner and demonstrated that the potential harms can be minimized in the absence of mediated access.[63] Indeed, the Illinois Commerce Commission ("ICC"), in an order not referenced by Low Tech, subsequently determined that AIN access issues were best addressed in other ICC forums rather than the AT&T/Ameritech interconnection proceeding because of a lack of record evidence to support a finding on those issues.[64]

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[61] *Intelligent Networks*, 6 FCC Rcd 7256, 7260 (1991).

[62] *See* Letter from F. Gordon Maxson, GTE, to William F. Caton, Commission Secretary, CC Docket No. 91-346 (filed May 22, 1995); Letter from Sandra L. Wagner, SBC, to William F. Caton, Commission Secretary, CC Docket No. 91-346 (filed June 23, 1995).

[63] The Illinois decision attached by Low Tech is instructive in this regard. While the ICC granted AT&T's request for access to AIN triggers, it imposed conditions to assure that Ameritech first had an opportunity to "address the possible risks to the network and incorporate the appropriate remedies to prevent any harm." The ICC also stated that, "[i]f Ameritech ... is not able to comply with the requirement to provide AIN triggers on a basis that eliminates possible harm to the network, it must submit a full explanation and showing in support thereof ...." *See* Low Tech's Petition, Attachment A at 47. Low Tech does not cite to a specific Georgia order so GTE is unable to respond to its assertion that Georgia has mandated unmediated access to AIN triggers.

[64] *See* ICC, Second Interim Order, at 133 (rel. Feb. 17, 1998).

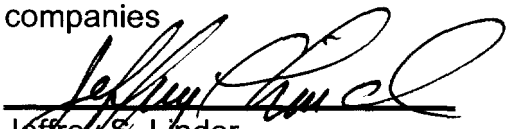
Low Tech has provided no reason to reverse the Commission's decision not to order unbundled access to AIN triggers and interconnection of third-party SCPs and IPs. Such access and interconnection pose real and significant risks to service reliability for ILECs and CLECs alike. Moreover, there is no evidence in the record – and Low Tech has supplied none in its Petition – to suggest that CLECs suffer impairment by designing and deploying AIN-based services on the ILECs' networks rather than on their own. Low Tech's Petition therefore should be denied.

III. CONCLUSION

BellSouth and Bell Atlantic have raised legitimate concerns regarding certain aspects of the Commission's new inside wire rules. By granting their petitions, the Commission can promote competition while assuring that it avoids placing unreasonable burdens on ILECs and creating unnecessary inconsistencies with longstanding precedent. In contrast, the Commission should deny the petitions submitted by the CLECs and IXCs. Those parties seek relief that would confer undue advantages on individual companies while frustrating the development of economically rational competition and the deployment of advanced services.

Respectfully submitted,

GTE Service Corporation and its affiliated domestic communications companies

By: 

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March 22, 2000

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